

MINUTES OF THE REGULAR MEETING OF JANUARY 14, 2016

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, January 14, 2016 in the County Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Michael Johnson, Mr. Rodney Smith, and Mr. I.G. Burton, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, Ms. Janelle Cornwell – Planning and Zoning Manager and Mr. Daniel Brandewie – Planner II.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Revised Agenda as circulated. Motion carried 4 – 0.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Revised Minutes of November 19, 2015. Motion carried 4 – 0.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of December 10, 2015 as amended. Motion carried 4 – 0.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of December 16, 2015 as circulated. Motion carried 4 - 0.

OLD BUSINESS

Subdivision 2014 – 5 – Everett C. Lathbury, III Subdivision

A Major Subdivision of land in an AR-1 Agricultural Residential Zoning District in Baltimore Hundred, Sussex County, by dividing 19.16 acres into 6 lots, and a waiver from the forested buffer requirements; located north of Omar Road (Route 54) 657 feet east of Gray Road (Road 342) and east of Gray Road (Road 342) 764 feet north of Omar Road (Route 54) (911 Address: None Available) Tax Map I.D. 134-11.00-40.00.

Ms. Cornwell advised the Commission that two lots have frontage along Gray Road; that three lots have frontage on the proposed Ida Jane Lane; that one lot has frontage on both Ida Jane Lane and Gray Road, where an existing driveway already exist; that the lots range from 0.91 acres to 6.03 acres in size; that the Commission deferred action pending receipt of a septic feasibility study and restrictive covenants, which have both been received; that staff has also received a Letter of No Objection to recordation from DelDOT; and that the Commission may now grant preliminary consideration on this application.

The Commission discussed this application which has been deferred since October 23, 2014.

Mr. Smith stated that he would recommend that the Commission grant preliminary approval of Subdivision No. 2014-5 for Everett C. Lathbury, III based on the record and for the following reasons:

- 1) Although this is a subdivision of 6 total lots, 3 of the lots are strip lots fronting on County roads. The strip lots are consistent with existing adjacent strip lots.
- 2) The 3 interior lots (#9, 10, and 11) are large lots of 4.55 acres, 4.25 acres, and 6.03 acres. This is much greater than the minimum 0.75 acre lot size normally required in the AR-1 District.
- 3) The proposed subdivision is integrated into the surrounding area, and it will not adversely affect nearby uses or property values.
- 4) The proposed subdivision is consistent with the purpose of the subdivision.
- 5) A waiver from the vegetated buffer requirement is appropriate for this subdivision. Since 3 of the lots are strip lots, the remaining 3 lots are separate. Since the Code only imposes the buffer requirement for subdivision of 4 or more lots, the waiver is appropriate for these 3 lots.
- 6) This preliminary approval is subject to the following conditions:
 - A. There shall be no more than 6 lots as shown on the preliminary site plan.
 - B. The applicant shall record restrictive covenants to establish responsibility for the perpetual maintenance of streets, roads, or any stormwater management facilities.
 - C. The applicant shall comply with all of DelDOT's requirements concerning entrances and roadway improvements.
 - D. The developer shall maintain as many existing trees as possible. The undisturbed areas shall be shown on the Final Site Plan.
 - E. The Final Site Plan shall contain a wetlands delineation.
 - F. The Final Site Plan shall clearly indicate the existence and location of the Blackwater Tax Ditch as well as any tax ditch easements.
 - G. There shall be no further subdivision of the lots that are the subject of the application.
 - H. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to grant preliminary approval of Subdivision No. 2014-5 for Everett C. Lathbury, III for the reasons and with the conditions stated. Motion carried 4 – 0.

C/U #2036 – Jimi Kellogg

An Ordinance to grant a Conditional Use of land in a GR (General Residential District) for parking of employee vehicles and vans for a cleaning service business to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 22,323 square feet, more or less. The property is located northeast of Field Lane, a subdivision street, 200 feet southeast of Munchy Branch Road (Road 270-A). (911 Address: 36181 Field Lane, Rehoboth Beach) Tax Map I.D. 334-13.00-873.00.

The Commission discussed this application which has been deferred since December 10, 2015.

Mr. Johnson stated that he would move that the Commission recommend denial of Conditional Use No. 2036 for Jimi Kellogg for parking of employee vehicles and vans for a cleaning service business based upon the record made during the public hearing, and for the following reasons:

- 1) It appears that this business started small at the Applicant's residence. But, the record indicates that the business has successfully grown, and it has outgrown this particular location.
- 2) There were parties that appeared in opposition to this application. All of them agreed that the business has outgrown the location and is not compatible with the neighborhood.
- 3) This location is located on a lot in a residential neighborhood. The property is surrounded by homes on several sides. This commercial use, including the parking, traffic and trucking activities, is not compatible with the residential surroundings.
- 4) There is evidence in the record that this use now adversely affects neighboring properties, the community and adjacent roadways due to the traffic generated by the use, the number of employees coming to and from the location, and other factors.
- 5) There are other more appropriate locations for this type of use in Sussex County that are either zoned for the use or that are not surrounded by existing residential properties.
- 6) For all these reasons, the successful growth of this small business means that it no longer fits in with its local residential surroundings and another more appropriate location should be found to allow it to continue its growth.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be denied for the reasons stated. Motion carried 4 – 0.

C/U #2037 – Gilbert J. Bernoski, Jr.

An Ordinance to grant a Conditional Use of land in a GR (General Residential District) for an auto repair shop to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 1.101 acres, more or less. The property is located northeast of Mount Joy Road (Road 297) 0.4 mile east of Gravel Hill Road (Route 30) (911 Address: 26371 Mount Joy Road, Millsboro) Tax Map I.D. 234-21.00-50.00.

The Commission discussed this application which has been deferred since December 10, 2015.

Mr. Johnson stated that he would move that the Commission recommend denial of Conditional Use No. 2037 for Gilbert J. Bernoski, Jr. for a conditional use to operate an auto repair shop based upon the record made during the public hearing and for the following reasons:

- 1) I do not feel that the Applicant made a sufficient record in support of the conditional use. The information presented was very vague. Also, the operator of the business was not present to offer any details about the nature of the business or its impact on the community.
- 2) There was testimony in the record that this is a residential area and that the use as an automobile repair facility is not compatible with neighboring properties or the area in general.
- 3) There was evidence in the record that this site has been used by more than one automobile repair businessman and that there has been a fairly high volume of vehicles that have been coming to and from the site or have been located on the site in the past. Based upon the lack of information in the record about the proposed conditional use, it is difficult to approve this application with sufficient conditions to protect the neighboring properties and to address these concerns in the future.

- 4) There is evidence in the record that the owner of the property nor the operator of the business does not reside on the premises. As a result, there is no basis for the use of this location other than its availability. It is not the type of application where it is primarily a home based business where an applicant earns a little bit of extra money from his home.
- 5) There are more appropriate locations for this business in Sussex County that are either zoned for this use or that are not located in a primarily residential area.
- 6) For all these reasons, it is my motion that the Sussex County Planning and Zoning Commission recommend denial of this conditional use.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be denied for the reasons stated. Motion carried 4 – 0.

C/U #2039 – Performance Injection Equipment Co., LLC

An Ordinance to grant a Conditional Use of land in an AR-1 (Agricultural Residential District) for manufacturing and installation of performance automotive parts and accessories to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 34,740 square feet, more or less. The property is located northeast corner of DuPont Boulevard (U.S. Route 113) and Betts Lane (911 Address: 24994 Betts Lane, Georgetown) Tax Map I.D. 133-6.00-110.00.

The Commission discussed this application which has been deferred since December 10, 2015.

Mr. Johnson stated that he would move that the Commission recommend approval of Conditional Use No. 2039 for Performance Injection Equipment Co., LLC for manufacturing and installation of performance automotive parts and accessories based upon the record made at the public hearing and for the following reasons:

- 1) The property has historically been used for commercial purposes since at least 2002. The previous business, a heating and air conditioning business moved out in 2013. This proposed use will be consistent with the prior uses of the property, and will use the same building that currently exists on the property.
- 2) The use is to manufacture, research and test performance automotive equipment and it will not be a general repair shop. The sales of performance parts are primarily through the businesses website.
- 3) The site is located in an area where there are many established businesses and commercial uses, including Kruger Trailers, Pep-Up, the Georgetown Speedway, Infinity Shoppers, a hair salon, Ad-Art, Classic Autos, Stockley Materials, M.L. Joseph Construction, Ironworks and others. The proposed use is consistent with these other existing businesses.
- 4) The proposed use will not adversely affect traffic or area roadways. It will also not adversely affect neighboring or adjacent properties.
- 5) The applicant sent letters to neighbors explaining the uses and activities being conducted on the site. No parties objected to the use and no parties appeared in opposition to the application during the public hearing.
- 6) This recommendation is subject to the following conditions:
 - a. No outside repair work shall be performed on the site.

- b. Any fluids removed from vehicles shall be placed in approved containers and removed by licensed handlers of those materials.
- c. All used or junked parts, equipment, etc. shall be stored from view from neighboring properties and roadways and shall be appropriately discarded or recycled.
- d. The chassis dynamometer shall be operated with the doors to its building closed. It shall also only be operated between 10:00 a.m. and 5:00 p.m. Monday through Friday.
- e. The property shall have security lighting that is downward screened so that it does not project onto neighboring properties or roadways.
- f. One lighted sign, not to exceed 32 square feet per side shall be permitted.
- g. The applicant shall comply with all DelDOT requirements concerning access and roadway improvements.
- h. All dumpsters or trash disposal containers shall be screened from view from neighboring and adjacent properties and roadways.
- i. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 4 – 0.

PUBLIC HEARINGS

There was a consensus of the Commission to hold a combined public hearing on C/Z #1790 and C/Z #1791, the applications of Carillon Square Apartments, LLC and that each application would be voted on separately.

C/Z #1790 – Carillon Square Apartments, LLC

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from a C-1 (General Commercial District) to an AR-1 (Agricultural Residential District) for a certain parcel of land lying and being in Indian River Hundred, Sussex County containing 8.66 acres, more or less. The property is located 520 feet west of John J. Williams Highway (Route 24) and 1,200 feet south of Indian Mission Road (Route 5) (911 Address: None Available) Tax Map I.D. 234-23.00-269.13 (Part of) and 269.15 (Part of).

C/Z #1791 – Carillon Square Apartments, LLC

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 (Agricultural Residential District) and a C-1 (General Commercial District) to a HR-1 (High Density Residential District) for a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 17.19 acres, more or less. The property is located southwest of Indian Mission Road (Route 5) and 500 feet west of John J. Williams Highway (Route 24) (911 Address: None Available) Tax Map I.D. 234-23.00-260.00 & 269.18 (Part of).

The Commission found that the Applicants submitted their applications on October 2, 2015, and an Exhibit Booklet on January 4, 2016, which contains a presentation outline; a data column; references to existing conditions; a boundary survey; a copy of the rezoning applications; a copy

of deeds; a legal description; preliminary site plans; a rezoning plan; multiple exhibits, maps and aerials; a PLUS response; an Environmental Assessment and Public Facilities Evaluation Report; and responses to the Subdivision Ordinance Section 99-9C.

Mr. Lank advised the Commission that one letter of support was received from Mike Schwartz, an adjacent land owner, referencing that he believes that these parcels are appropriate for the intended use based on their proximity to the surrounding area and the existing infrastructure to support this use; that as an owner of the adjacent WAWA parcel, which is a part of a planned shopping center; and that he feels that this proposed project would nicely compliment the entire site and become an attractive asset to the overall surrounding community of Long Neck.

Mr. Lank advised the Commission that a previous applicant had submitted a Traffic Impact Study to DelDOT in 2006 for a larger project; that in 2013 a DelDOT consultant reviewed the study and that DelDOT sent comments; that the commercial portion of the mixed use development considered in that Traffic Impact Study is largely built; that the site entrances along Route 24 and Route 5 have been constructed as outlined in the Traffic Impact review letter; that the entrance along Route 5 will serve as the main entrance to the project, with secondary access to Route 24; that the proposed development will generate fewer trips than the original project, therefore a new Traffic Impact Study was not required; that the developer has made an equitable contribution toward a DelDOT project at the intersection of Route 24 and Route 5; that this project is a part of DelDOT's Highway Safety Improvement Program which in part recommended adding a second through lane in each direction along Route 24; and that the developer dedicated an additional 25-foot right-of-way along their site frontage on Route 24.

Mr. Lank advised the Commission that a copy of the Preliminary Land Use Service (PLUS) comments are in the file and that the developers response to the PLUS comments are in the Exhibit Booklet provided by the applicant.

Mr. Lank advised the Commission that in reference to C/Z #1790 the County Engineering Department Utility Planning Division provided comments on January 13, 2016 in the form of a memorandum referencing that the property is located in the Long Neck Planning Area; that Ordinance 38 construction is required; that the current System Connection Charge Rate is \$4,510.00 per EDU; that Parcel 269.13 has been provided with a connection point on the parcel's frontage along Route 24; that the project is capable of being annexed into a Sanitary Sewer District following completion of the County's administrative procedure for annexation; that conformity to the North Coastal Area Planning Study will be required; that the parcel areas are in the Long Neck Planning Area and connection is mandatory; that sewer service is not available at this time; that the Engineering Department has no objection to the proposed zoning; that the County requires design and construction of the collection and transmission system to meet Engineering Department requirements and procedures; that the County Engineer must approve the connection point; that a sewer concept plan must be submitted for review and approval prior to sewer connection; and that a concept plan is required.

Mr. Lank advised the Commission that in reference to C/Z #1791 the County Engineering Department Utility Planning Division provided similar comments to the comments provided for C/Z #1790 and added that in order to receive sewer service, construction of a pump station and

force main is required; that the County does not have a schedule to provide sewer service to the parcels; that the sewer system design has provided sewer capacity on the basis of 4.0 EDU per acre for agricultural/residential zoned lands and 12.0 EDU per acre for commercially zoned lands; that the total sewer design capacity based on the current zoning equates to 110 EDU; that the rezoning creates the potential for up to 12 units per acre which exceeds the Engineering Departments capacity assumptions; that prior to being approved for a project that exceeds 110 EDU, a capacity evaluation shall be performed at the developer's expense to determine whether collection or transmission system improvements are required; that any and all system improvements shall be performed at the developer's expense; and that if the application for C/Z #1790 is approved and intervening parcel lines are deleted to create a single parcel, a total of up to 214 EDU would be available for development of the single parcel.

The Commission found that Eugene Bayard, Esquire of Morris James Wilson Halbrook & Bayard, LLP, was present on behalf of the application with Zac Crouch, Professional Engineer with Davis Bowen & Friedel, Inc., Ben Gordy with Carillon Square Apartments, LLC, and Jax Corrado, Director of Leasing and Property Manager for Beach Plum Dunes Apartments, and that they stated in their presentations and in response to questions raised by the Commission that they are requesting approval to rezone portions of the property by downzoning 8.66 acres from C-1 General Commercial to AR-1 Agricultural Residential to provided wooded open space and to rezone 17.19 acres from AR-1 Agricultural Residential and C-1 General Commercial to allow for the construction of 204 apartment units; that they would be highlighting their proposal on a power point display that are excerpts from the Exhibit Booklet; that east of the sites are C-1 General Commercial properties improved by a WAWA convenience store and a Rite-Aide Pharmacy; that Timber Acres, a manufactured home community exist to the south; that a shopping center exist to the north across Route 5; that GR General Residential lands exist to the west; that the properties have had previous rezoning applications referencing C/Z #1491, C/Z #1708, and C/Z #1728; that the site is fairly wooded; that no wetlands will be impacted; that there are no historical or cultural sites on the properties; that no stormwater management issues are anticipated; that a former site plan had intended a condominium project on the site; that a new Traffic Impact Study was not required by DelDOT; that Route 24 and Route 5 DelDOT improvements have been completed; that central water for fire protection and drinking water will be provided; that the proposed density equates to 11.8 units per acre overall; that the 8.66 acres portion of the property proposed for downzoning to AR-1 will remain as open space and a walking trail will be provided to serve the community; that the existing driveway from Route 5 will be the primary access to the project; that some of the improvements intended include a clubhouse, a 4-seasons pool, gardens, a dog park, game courts, and sidewalks throughout the project; that seven (7) apartment buildings are proposed; that the project is proposed to be similar to the Beach Plum Dunes Apartments near Kings Highway just off of Route One; that the Beach Plum Dunes Apartments are being developed with similar designed buildings with 144 – three story apartments with elevators, a clubhouse, swimming pools, and game courts; that the Beach Plum Dunes Apartment started construction in 2013 and is 93% occupied; that all of the buildings have been completed; that the residents are either young professionals or retirees; that the intended plan is less impacting than previous plans for the properties and is intending to be sensitive to the woodlands and wetlands; that the assemblage of the properties is consistent with the Comprehensive Land Use Plan, the developing character of the Long Neck area, and is supported by State Housing; that the HR-1 High Density Residential zoning permits multi-family

housing for sale or rent, motel and hotels; that C-1 General Commercial zoning permits the same uses; that the properties will be combined into one larger parcel; that the rezoning does not increase the density over the existing conditions/zoning of the properties; and that the wellhead protection area will be protected.

The Commission found that Vesper Rolle, a resident of Beach Plum Dunes Apartments, spoke in support of the application and the quality of the improvements built at the Beach Plum Dunes Apartments and anticipating that the developers would be building the same quality in the construction of this project, making it a high quality project.

The Commission found that there were no parties present in opposition to this application.

At the conclusion of the public hearings, the Commission discussed the application.

In reference to C/Z #1790, motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to defer action for further consideration. Motion carried 4 – 0.

In reference to C/Z #1791, motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to defer action for further consideration. Motion carried 4 – 0.

OTHER BUSINESS

Lands of Lacey Lafferty

Minor Subdivision with 50' Private Road

Ms. Cornwell advised that Commission that this request is for a minor subdivision off of a 50 foot private road south of Chipmans Pond Road; that the subdivision will create two lots with a residual parcel; that the subdivision will utilize an existing entrance; that the Commission had previously approved the creation of the existing lot being divided with a 50 foot easement over the existing entrance in 2014; that the property is zoned AR-1 Agricultural Residential; that the Tax Map I.D. is 232-13.00-6.00; that staff is in receipt of the DelDOT approval for the subdivision; and that if the minor subdivision is approved, any further subdivision shall require a major subdivision application.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to grant preliminary approval of the proposed 2 lots and residual parcel with the condition that any further subdivision of the parcel shall require submittal of a major subdivision application. Motion carried 4 – 0.

ADDITIONAL BUSINESS

Presentation regarding Co-Housing

Barbara Vaughn and Eric Wahl, Landscape Architect, were present and presented a presentation of Cohousing, a concept of creating high density on smaller lots in urban areas, and stated that the typical residents are retirees and young professionals; that the concept is a creative method of

development, typically creating pocket neighborhoods with community facilities; that they have spoken to some shareholders; that the City of Lewes has included the concept in their Comprehensive Plan; that the concept has been introduced to State Housing; that public relations are needed to endorse the concept; that most existing projects are small with a limited number of units; that a national organization exist for cohousing projects; and suggested that it is something that the County should consider referencing in the next Comprehensive Land Use Plan.

The Commission thanked Ms. Vaughn and Mr. Wahl for their presentation.

No action was taken.

Presentation regarding Lewes By-Ways Corridor Management Plan

Gail Van Gilder, Chairperson for the proposed Lewes Scenic and Historic Byways and Jeff Green of Delaware Greenways were present and gave a presentation on the proposed By-Way; described a scenic and historic byway and which roads around the City of Lewes are being considered to be a byway; referenced the intended mission of the byway; provided some history of the Lewes area; discussed funding; described a Corridor Management Plan; referenced their accomplishments; described their goals and resultant strategies; described their vision and approach to development; described their plans for the intersection of Kings Highway and Gills Neck Road, their planned access to the Great Marsh at Green Hill Light, and the Savannah Road Streetscape; described the benefits to the County; described their proposed management committee; described their future implementation projects; and asked that the County considered endorsing their proposed Corridor Management Plan.

Michael Hahn, DelDOT Byway Coordinator, was present and spoke in support of the Byway plans.

The Commission thanked Ms. Van Gilder, Mr. Green, and Mr. Hahn for their presentations and comments.

No action was taken.

Discussion regarding converting Planning Commission Districts to match Council Districts

The Commission discussed and compared the boundaries of the Districts.

There was a consensus of the Commission to not take any action on the boundaries until a full Commission is present.

Meeting adjourned at 8:50 p.m.